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In re Application of

OGAWA et al.

Application No. 09/812,582

Filed: March 21, 2001

For: **DISK DRIVE APPARATUS AND
METHOD OF MOUNTING SAME**

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:
:DECISION ON PETITION TO
:WITHDRAW HOLDING OF
:ABANDONMENT
:

This is a decision on the paper work filed June 19, 2003, which is being treated as a petition based on M.P.E.P. 711.03(c)(II), and pursuant to 37 C.F.R. § 1.181(a), to withdraw the holding of abandonment. No fee is required.

This application became abandoned for failure to timely submit a proper response to the Non-Final Office action mailed January 27, 2003 restarting the period for response from the date of the new mailing in view of the decision (paper # 8, mailed January 15, 2003) granting applicant's petition (paper # 7, filed December 3, 2002) request the Office to reset the period for response due to receipt of an incomplete Office action. No Notice of Abandonment has been mailed.

Petitioner alleges that the Non-Final Office Action mailed January 27, 2003 was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the records indicate that the non-final Office action was properly mailed to the practitioner of record at the correspondence address at the time of mailing. Thus, there was no irregularity in mailing the Non-Final Office Action on the part of the U.S. Patent and Trademark Office.

The allegation of non-receipt is supported by a statement by the petitioner attesting that the Office Action was not received at the correspondence address, and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate petitioner's claim.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of the Office action as set forth above. Therefore, the holding of abandonment is hereby withdrawn.

Accordingly, the petition is **GRANTED**.

Due to the time lapse between the original mailing and the date of this decision, the application file is being forwarded to the examiner for updating the search and the Office action as appropriate. From there, the file will be forwarded to TC 2600 technical support staff for mailing the new action. The shortened statutory period for reply will be set to run from the mailing date of the new action.



Mark Powell, Director
Technology Center 2600
Communications